DOCKET NO. WWM-15-6009136S

MELANIE PEREZ	:	SUPERIOR COURT
VS.	:	JUDICIAL DISTRICT OF WINDHAM AT PUTNAM
STATE OF CONNECTICUT, JUDICIAL DEPARTMENT	:	JULY 2, 2015

PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO DISMISS

Plaintiff, through her undersigned counsel, hereby objects to Defendant's Motion to Dismiss (Doc. No. 120.00) dated April 27, 2015. Defendant's Motion seeks dismissal of Plaintiff's requests for relief in the form of emotional distress damages, punitive damages, prejudgment interest, and depletion of personal savings. Defendant's Motion also seeks dismissal of the entire complaint, or in the alternative, a transfer of venue, based on a claim of improper venue. For all of the reasons set forth herein, Defendant's Motion should be denied as it relates to Plaintiff's claims for emotional distress and other compensatory damages, interest, and the venue of this action.

BACKGROUND

This case arises from Defendant's violation of Plaintiff's right to be free of discrimination on the basis of disability and Defendant's failure to provide reasonable accommodation for Plaintiff's disability pursuant to the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. § 46a-60 et seq. ("CFEPA"). Plaintiff is a current employee of Defendant.

At all relevant times, Plaintiff has worked for Defendant as a Probation Officer in Defendant's Danielson, Connecticut locations. (Complaint ¶¶ 9-11). Defendant is an

employer within the meaning of CFEPA. (Complaint ¶3). Plaintiff has a moderate to severe hearing disability in both ears and is therefore a disabled person within the meaning of CFEPA. (Complaint ¶¶4, 5). Despite Plaintiff's repeated requests for reasonable accommodation, Defendant failed to provide reasonable accommodation for Plaintiff's disability. (Complaint ¶¶ 13-31). Plaintiff filed a timely complaint of discrimination with the Connecticut Commission on Human Rights and Opportunities ("CHRO") onJanuary 28, 2013 and on January 20, 2015, obtained a release of jurisdiction from the CHRO pursuant to Conn. Gen. Stat. §46a-100 permitting her to file this action. (Complaint ¶8).

STANDARD OF REVIEW

In considering a motion to dismiss, "a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." *Villager Pond, Inc. v. Town of* Darien, 54 Conn.App. 178, 184 (1999) (citing *Pamela B. v. Ment*, 244 Conn. 296, 308 (1998)).

PLAINTIFF'S COMPLAINT CANNOT BE DISMISSED FOR IMPROPER VENUE

Pursuant to Conn. Gen. Stat. § 46a-100, "[a]ny person who has timely filed a complaint with the Commission on Human Rights and Opportunities in accordance with section 46a-82 and who has obtained a release from the commission in accordance with section 46a-83a or 46a-101 may also bring an action in the superior court for the judicial district in which the discriminatory practice is alleged to have occurred or in which the respondent transacts business, except in any action involving a state agency or official ***may*** be brought in the superior court for the judicial district of Hartford." (emphasis added). Here, Plaintiff timely filed a complaint with the CHRO on January

28, 2013 and on January 20, 2015 obtained a release of jurisdiction from the commission in accordance with Conn. Gen. Stat. §46a-100. Here, the discriminatory practice is alleged to have occurred at Plaintiff's work site in Danielson, where Respondent transacts business and which is located in the Judicial District of Windham. While §46a-100 *permits* an action against the state to be brought in the judicial district of Hartford, it does not require that the action be brought in Hartford. Therefore, venue in this judicial district is proper.

If, however, this Court finds that venue in the judicial district of Windham is improper and venue is properly in Hartford, the action should be transferred rather than dismissed. General Statutes § 51-351 provides that "[n]o cause shall fail on the ground that it has been made returnable to an improper location." Accordingly, improper venue would only be grounds to transfer the matter, and not grounds for dismissal. *Sprague v. Commission on Human Rights & Opportunities,* 3 Conn. App. 484, 486-87, 489 A.2d 1064, cert. denied, 196 Conn. 804, 492 A.2d 1240 (1985).

PLAINTIFF'S CLAIM FOR EMOTIONAL DISTRESS DAMAGES SHOULD NOT BE DISMISSED AS SUCH DAMAGES ARE PROVIDED FOR BY CFEPA

In her prayer for relief, Plaintiff seeks, inter alia, legal and equitable relief, including but not limited to compensatory damages, pursuant to Conn. Gen. Stat. § 46a-104. Defendant claims in its motion that Plaintiff's claim for emotional distress damages should be dismissed because such damages "cannot be awarded under Connecticut General Statutes § 46a-60."[1] Defendant cites no authority nor advances any legal

[1] Defendant's motion to dismiss is not the proper vehicle to challenge the legal sufficiency of Plaintiff's claim for emotional distress. Such challenge is properly made by way of a motion to strike. Practice Book § 10-39; *Gulack v. Gulack,* 30 Conn.App. 305, 309 (1993) ("The proper method to challenge the legal sufficiency of a complaint is to make a motion to strike prior to trial.")

theory in support of that position. In fact, Defendant has not included even a single word in reference to Plaintiff's claim for emotional distress damages in its memorandum of law. For these reasons, and because the Connecticut Fair Employment Practices Act provides for compensatory damages, which includes emotional distress damages, Defendant's motion must be denied in this regard.

It is well established that the Superior Court may award damages for emotional distress pursuant to CFEPA. The Connecticut Supreme Court has noted that the legislature, by enacting Conn. Gen. Stat. §46a-104, the remedial provision of CFEPA, "granted the power to the court to award compensatory damages." *Bridgeport Hosp. v. Comm'n on Human Rights & Opportunities,* 232 Conn. 91, 113 (1995). Conn. Gen. Stat. §46a-104 states that:

> The court may grant a complainant in an action brought in accordance with section 46a-100 ***such legal and equitable relief which it deems appropriate*** including, but not limited to, temporary or permanent injunctive relief, attorney's fees and court costs. The amount of attorney's fees allowed shall not be contingent upon the amount of damages requested by or awarded to the complainant.

(emphasis added). Courts have noted that the legislature expanded the form of compensation available to employment discrimination plaintiffs by adding section 46a–104. Compensatory damages are obviously within the phrase "legal ... relief." The Connecticut courts have so interpreted this statute. *See, e.g., Collier v. Connecticut Dept. of Public Safety,* No. CV 96–80659, 1999 WL 300643, at *3 (Conn.Super. May 3, 1999); *Cantoni v. Xerox Corp.,* No. CV–98–0582705–S, 1999 WL 73918, at *1 (Conn.Super.Feb. 3, 1999); *see also Angelsea Productions, Inc. v. Commission on*

Human Rights & Opportunities, 236 Conn. 681, 699, 674 A.2d 1300, 1310 (1996) (stating in dictum that a plaintiff is entitled to greater damages following a civil action than could be recovered in an administrative hearing before the CHRO). Because the Court may, in its discretion pursuant to §46a-104, award Plaintiff damages including compensatory damages, Plaintiff's claim emotional distress and other compensatory damages should not be dismissed.

SOVEREIGN IMMUNITY HAS BEEN WAIVED UNDER §46a-104 FOR CLAIMS FOR COMPENSATORY DAMAGES INCLUDING INTEREST UNDER THAT STATUTE

As noted above, the legislature's enactment of §46a-104 grants the Court the power to award compensatory damages. Interest on damages recoverable under that section is in the nature of compensatory damages as the very nature of interest is to provide full compensation.

As the Connecticut Supreme Court has held, "§ 46a–100 represents an unambiguous waiver of sovereign immunity, authorizing actions against the state for alleged discriminatory employment practices in violation of § 46a–60." *Lyon v. Jones*, 291 Conn. 384, 397 (2009). As noted above, §46a-104, "the court may grant a complainant in an action brought in accordance with section 46a-100 ***such legal and equitable relief which it deems appropriate..."*** (emphasis added). As such, 46a-100 and 46a-104 represent a clear and unambiguous waiver of the State's sovereign immunity as to claims for legal and equitable relief pursuant to CFEPA.

Defendant has cited several cases in support of its claim that Plaintiff may not recover interest in this matter, each of which is inapposite. The only case cited by Defendant which addresses 46a-104, *Chouhan v. Univ. of Conn. Health Ctr.,* contains

no analysis as to whether interest is specifically provided for in § 46a-104. In reaching its conclusion, the court in *Chouhan* relied upon the two cases Defendant relies upon here, *Struckman v. Burns* and *State v. Chapman*, neither of which is applicable and neither of which addresses the issue of interest awardable pursuant to §46a-104. In *Struckman v. Burns*, 205 Conn. 542 (1987), the issue was whether interest should be awarded pursuant to Conn. Gen. Stat. § 52-192a. In *State v. Chapman*, 176 Conn. 362 (1978), the court declined to award costs because the applicable statute, unlike § 46a-104, did not expressly provide for them, Likewise, Defendant's reliance on CHRO v. Truelove & MacLean, Inc., 238 Conn. 337 (1996), is misplaced because that case addressed the remedies awardable for CFEPA violations by the CHRO pursuant to §46a-86, which, as noted above, are narrower that those a court may award pursuant to §46a-104. *Bridgeport Hospital v. Commission on Human Rights & Opportunities,* 232 Conn. 91, 113 (1995)(noting that while §46a-86 did not permit the CHRO to award compensatory damages, the legislature's enaction of §46a-104 permitted the award of compensatory damages by the Superior Court.)

Other courts have held that CFEPA's remedial provisions constitute waiver of sovereign immunity in that they specifically provide discretion to the courts to decide what damages to award. For example, in *Eaddy v. Dep't of Children & Families*, No. HHDCV106013363S, 2011 WL 4424428, at *7, Judge Peck denied the defendant's motion to dismiss the plaintiff's claims for money damages on the basis that §46a-99 specifically provides for the court's to have discretion over what damages to award. The remedial provision under which Plaintiff here seeks money damages and interest, §46a-104 is even more specific in its language as to which damages – legal and equitable –

the courts may award. This Court should follow Judge Peck's reasoning in *Eaddy* and the plain language of §46a-104, which permit Plaintiff to recover compensatory damages, including interest, pursuant to that section.

CONCLUSION

For all the foregoing reasons, Defendant's Motion to Dismiss should be denied as to Plaintiff's claim for interest pursuant to §46a-104 and as to Plaintiff's claims for emotional distress and other compensatory damages. Likewise, Defendant's motion should be denied on the issue of venue and venue should remain in the Judicial District of Windham. In the event the Court finds that venue in this judicial district is improper, the action should be transferred as dismissal under such circumstances is not permitted.

PLAINTIFF,
MELANIE PEREZ

By: s/

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CERTIFICATION

I hereby certify that a copy of the foregoing was mailed to the following counsel of record on this 2nd day of July, 2015:

Josephine S. Graff
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WESTLAW CASES

Cantoni v. Xerox Corp.
Superior Court of Connecticut. February 3, 1999 Not Reported in A.2d 1999 WL 73918 24 Conn. L. Rptr. 38 (Approx. 2 pages)

Declined to Follow by Wright v. Colonial Motors, Inc., Conn.Super., May 16, 2012

1999 WL 73918

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut.

James CANTONI,

v.

XEROX CORPORATION.

No. CV-98-0582705-S. Feb. 3, 1999.

MEMORANDUM OF DECISION ON MOTION TO STRIKE

FINEBERG.

*1 The Plaintiff, James Cantoni, has brought this action in one count alleging violation by the Defendant, Xerox Corporation, of rights afforded to him under the Connecticut Fair Employment Practices Act, General Statutes § 46a-51 et seq. The Defendant has moved to strike certain portions of the complaint and prayer for relief therein on the ground that they fail to state a claim upon which relief can be granted. A motion to strike is the proper motion for this purpose.

The Defendant first moves to strike the claim under General Statutes § 46a-58(a) on the ground that this section provides no basis for claims of discriminatory employment practices that fall within the scope of General Statutes § 46a-60, citing *Commission on Human Rights & Opportunities v. Truelove & Maclean, Inc.*, 238 Conn. 337, 348, 680 A.2d 1261 (1996). The only reference in the complaint to § 46a-58(a) is in Paragraph 20 of the complaint. That paragraph reads as follows:

> 20. The actions of the defendant described above violated Sections 46a-58 (a), 46a-60(a)(1) and (sic) 46A-60(A)(4) of the Connecticut General Statutes.

It is conceded that § 46a-60(a) provides a basis for this action.

Prior to the 1978 Practice Book revision, a motion to strike (or its demurrer predecessor) individual portions or paragraphs of a count did not lie if the count as a whole stated a cause of action. See, e.g., *Schrader v. Rosenblatt*, 26 Conn.Supp. 182, 183, 216 A.2d 451 (1965). Arguably under the present rules, a motion to strike may properly lie with respect to an individual paragraph in a count. See, e.g., *Nordling v. Harris*, Superior Court, judicial district of Fairfield, Docket No. 329660 (August 7, 1996) (Levin, J.) 17 CONN. L. RPTR. 296, 298 fn. 1. However, the weight of authority in the Superior Court is that the motion does not lie, except possibly where the subject paragraph attempts to state a cause of action. See, e.g.: *Zimmerman v. Connecticut College, et al*, Superior Court, judicial district of New London, Docket No. 544623 (July 2, 1998) (Handy, J.); *Larson v. B & B Realty*, Superior Court, judicial district of Danbury, Docket No. 324087 (April 6, 1998) (Monaghan, J., 21 CONN. L. RPTR. 627); *Bombard v. Industry Riggers, Inc.*, Superior Court, judicial district of Waterbury, Docket No. 140181, (January 5, 1998) (Pellegrino, J.).

In this case, the Defendant does not seek to strike an entire paragraph, but in effect only the reference in Paragraph 20 to § 46a-58(a). There is no authority for the use of a motion to strike for this limited purpose.

By its reference to § 46a-60, Paragraph 20 does state a claim upon which relief can be granted.

The Defendant next moves to strike Plaintiff's request for punitive and emotional distress damages on the ground that such damages are not available under General Statutes § 46a-104. Section 46a-100 provides that any person who has obtained a release from the CHRO as provided in § 46a-101 may bring an action in the Superior Court. This action has been timely brought, the release having issued.

*2 Section 46a-104 reads as follows:

> The court may grant a complainant in an action brought in accordance with Section 46a-100 such legal and equitable relief which it deems appropriate *including, but not limited to,* temporary or permanent injunctive relief, attorneys fees and court costs. (Emphasis added.)

A suit brought under § 46a-100/101 clearly affords the complainant greater relief than that available before the CHRO. *Angelsea Productions, Inc., v. Commission on Human Rights & Opportunities,* 236 Conn. 681, 699. 674 A.2d 1300 (1996). There is no restriction in § 46a-104 against an award of damages for emotional distress or punitive damages. By use of the word "including," the section in effect authorizes such damages as are available in a civil action.

The motion to strike is denied.

All Citations

Not Reported in A.2d, 1999 WL 73918, 24 Conn. L. Rptr. 38

End of Document

Collier v. State
Superior Court of Connecticut. May 3, 1999 Not Reported in A.2d 1999 WL 300643 24 Conn. L. Rptr. 433 *(Approx. 6 pages)*

Disagreed With by Oliver v. Cole Gift Centers, Inc., D.Conn., February 17, 2000

1999 WL 300643

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.
Superior Court of Connecticut.

Jeanne G. COLLIER,

v.

STATE of Connecticut, Department of Public Safety.

No. CV96-80659. May 3, 1999.

MEMORANDUM OF DECISION RE: PLAINTIFF'S MOTION FOR POST TRIAL RELIEF (# 126) AND DEFENDANT'S MOTION TO SET ASIDE VERDICT, NEW TRIAL OR REMITTITUR (# 127, 127.01, 127.02)

ARENA.

*1 On January 28, 1999, the jury rendered its verdict in favor of the plaintiff, Jeanne G. Collier, on the first and third counts of her complaint. In so doing, the jury found that the defendant, the State of Connecticut Department of Public Safety, discriminated against the plaintiff on the basis of her age and in retaliation for the plaintiff's earlier filing of an age discrimination complaint, in violation of the Connecticut Fair Employment Practices Act (CFEPA), General Statutes § 46a-60 et seq. and the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq. The jury awarded $50,000.00 on the age discrimination claim and $150,000.00 on the retaliation claim, for a total compensatory damage award of $200,000.00. In addition, the jury made a specific finding as to both counts that the defendant's discriminatory actions were willful.

I. Plaintiff's Motion for Post-Trial Relief (# 126)

The plaintiff's Motion for Post-Trial Relief seeks post-trial relief on five separate grounds. The court will address each in turn.

A. Back Pay

The plaintiff seeks an award of back pay in the amount of $8,477.29, which represents back wages from the date of the provisional appointment on January 6, 1995. The defendant, in its Objection to Post-Trial Relief (# 129) and Supplemental and Reply Brief Objecting to Plaintiff's Claims for Relief (# 131) claims that the plaintiff's back-pay award should be limited to $4,134.11, from the date of the permanent appointment on December 4, 1995. The defendant claims that, because the plaintiff's claim regarding the provisional appointment was not made to the Equal Employment Opportunity Commission (EEOC) and the State of Connecticut Commission on Human Rights and Opportunities (CHRO), it is time barred. In response, the plaintiff argues that the defendant has waived its claim that back pay to the date of the provisional appointment is time barred because it failed to raise this defense in a special defense.

"Where ... a specific time limitation is contained within a statute that creates a right of action that did not exist at common law, then the remedy exists only during the prescribed period and not thereafter ... In such cases, the time limitation is not to be treated as an ordinary statute of limitation, but rather is as a limitation on the liability itself, and not of the remedy alone ... The courts of Connecticut have repeatedly held that, under such circumstances, the time limitation is a substantive and jurisdictional prerequisite, which may be raised at any time, even by the court sua sponte, and may not be waived ... (Citations omitted; internal quotation marks omitted.) *Avon Meadow Condo. Assn., Inc. v. Bank Boston Connecticut*, 50 Conn.App. 688, 699-00, 719 A.2d 66,cert. denied, 247 Conn. 946 (1998).

The time limitations of the ADEA and the CFEPA are contained within the statutes providing the right of action thereunder. Therefore, the limitations periods contained therein are jurisdictional and not subject to waiver. As a result the plaintiff's claim that the defendants have waived this issue by not pleading it as a special defense must fail.

SELECTED TOPICS

Civil Rights

Employment Practices

Adverse Employment Action Element of Prima Facie Case Age Discrimination

Secondary Sources

Proving that discharge was because of age, for purposes of Age Discrimination in Employment Act (29 U.S.C.A. §§ 621 et seq.)

58 A.L.R. Fed. 94 (Originally published in 1982)

. .This annotation collects the federal court cases which have discussed the burden of proof, the prima facie case, and the sufficiency of the evidence required to prove that a former employee has been di...

Cause of Action Under Age Discrimination in Employment Act [29 U.S.C.A. §§ 621 to 634] (ADEA), on Theory of Disparate Treatment, Based on Discharge in Reduction-in-Force or Reorganization

46 Causes of Action 2d 1 (Originally published in 2010)

...This article discusses actions under the Age Discrimination in Employment Act (29 U.S.C.A. §§ 621 to 634) (ADEA) for discrimination allegedly involving disparate treatment, where such action is based o...

Construction and application of Age Discrimination in Employment Act of 1967 (29 U.S.C.A. § 621 et seq.)

24 A.L.R. Fed. 808 (Originally published in 1975)

. .This annotation collects and analyzes all federal cases which have construed or applied provisions of the Age Discrimination in Employment Act of 1967 (29 U.S.C.A. §§ 621 et seq.). In addition to cases...

See More Secondary Sources

Briefs

Reply Brief for the Petitioners

2008 WL 1757560
Meacham v. Knolls Atomic Power Laboratory
Supreme Court of the United States.
April 14, 2008

...By its terms, the RFOA provision applies only to conduct that is "otherwise prohibited" elsewhere in the ADEA. As a result, it is naturally read as an exemption from liability. And this Court has long ...

Brief for Respondents

2008 WL 954279
Meacham v. Knolls Atomic Power Laboratory
Supreme Court of the United States.
April 04, 2008

..Respondent KAPL, Inc. is a wholly-owned subsidiary of Lockheed Martin Corporation, a publicly-held company. KAPL, Inc., operates the Knolls Atomic Power Laboratory, a facility owned by the United State...

Brief for the Petitioners

2008 WL 618088
Meacham v. Knolls Atomic Power Laboratory
Supreme Court of the United States.
March 04, 2008

...The plaintiffs in this case include Raymond Adams, Wallace Arnold, Deborah Bush, William Chabot, Allen Cromer, Thednick Eighmie, Belinda Gundersen (as appointed representative of her late husband, Paul...

*2 The plaintiff's complaint to the CHRO was filed on January 24, 1996. (Plaintiff's Exhibit 48.) The CHRO complaint states that the unlawful discriminatory practice complained of began on "January 5, 1995 and continue[d] through December 6, 1995."The CHRO complaint further alleges facts regarding the provisional appointment as does the complaint to this court.

General Statutes § 46a-82(e) provides that "[a]ny complaint filed pursuant to this section must be filed within one hundred and eighty days after the alleged act of discrimination ..." In *State v. Commission on Human Rights & Opportunities*, 211 Conn. 464, 559 A.2d 1120 (1989), the court considered this time limitation in connection with allegations of a continuing course of discrimination and a claim for back pay. Ultimately, the court held that the limitation period "acted as a limitation on the remedy rather than a limitation on the time one can bring a cause of action."*Id.*, 472, 559 A.2d 1120, citing *Veeder-Root Co. v. Commission on Human Rights & Opportunities*, 165 Conn. 318, 334 A.2d 443 (1973). This principle is known as the continuing violation principle.

In the present case, the plaintiff's CHRO complaint clearly alleges a continuing violation which began prior to the date of the provisional appointment. Since the CHRO complaint was filed on January 24, 1996, pursuant to General Statutes § 46a-82(e), the plaintiff is entitled to an award of back pay only from 180 days prior to January 24, 1996.

The plaintiff also prevailed on her federal ADEA claim. "The ADEA provides that, before an aggrieved person may initiate a private action, he or she must file with the EEOC a charge alleging unlawful age discrimination. 29 U.S.C. § 626(d). If the alleged acts of age discrimination occurred in a state that has enacted a law prohibiting age discrimination in employment and establishing an agency to grant or seek relief from such discrimination (deferral state), the aggrieved person must also file a signed written statement of the facts with the state agency. 29 U.S.C. § 633(b) *Joo v. Capitol Switch, Inc.*, 231 Conn. 328, 332, 650 A.2d 526 (1994). Because of the provisions of the CFEPA, Connecticut is a deferral state.

The ADEA "also establishes the outside time limits within which the discrimination charge must be filed with the EEOC and the deferral state agency. 'Such a charge shall be filed-(1) within 180 days after the alleged unlawful practice occurred; or (2) in a case to which Section 633(b) of this title applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.'29 U.S.C. § 626(d)."*Id.*, 333 n. 10, 650 A.2d 526. Since Connecticut is a deferral state, pursuant to the ADEA, the plaintiff is entitled to an award of back pay beginning on March 30, 1995, which is 300 days prior to January 24, 1996. [1]

*3 Accordingly, since the plaintiff prevailed on both her CFEPA and her ADEA claims, the plaintiff is awarded back pay in the amount of $6454.86. [2] The plaintiff is not entitled to back pay beginning on the date of the provisional appointment, which is more than one year prior to the filing of her CHRO complaint. In addition, the plaintiff's pension benefits shall be adjusted to reflect the award of back pay beginning on March 30, 1995.

B. Attorneys Fees

The plaintiff seeks an award of attorneys fees pursuant to General Statutes § 46a-104 [3] and 29 U.S.C. § 216(b). [4] In support of her claim, the plaintiff's counsel has submitted Plaintiff's Memorandum of Law in Support of Motion for Attorneys Fees (# 126.50) along with supporting affidavits, including the bill for legal services in the amount of $56,429.43. At the hearing on this motion, plaintiff's counsel submitted a supplemental bill for legal services rendered post trial through March 9, 1999 in the amount of $6,825.00. Therefore, the plaintiff seeks attorneys fees in the total amount of $63,254.43.

The court finds that the plaintiff is entitled to attorneys fees under both the CFEPA and the ADEA. The court has reviewed the motions and affidavits submitted in support of the plaintiff's claim for attorney's fees and finds the total amount of $63,254.43 to be a reasonable fee for the legal services rendered by the plaintiff's counsel in connection with this case. Plaintiff's counsel, Attorney Kathleen Eldergill, is a capable, experienced, highly skilled practitioner who has served her client well in this matter. Attorney Eldergill filed relevant memoranda, Requests to Charge and proposed jury interrogatories in connection with this trial. The plaintiff is hereby awarded her reasonable attorneys fees in the amount of $63,254.43 pursuant to General Statutes 46a-104 and 29 U.S.C. § 216(b)

C. Punitive Damages

Given the jury's finding of a willful violation, the plaintiff seeks punitive damages pursuant to the CFEPA in the amount of $63,254.43.[5]

The defendant, in opposition, argues that the plaintiff is not entitled to punitive damages because punitive damages are not specifically authorized in the CFEPA. Additionally, the defendant argues that, even if punitive damages are generally permitted in the CFEPA, the doctrine of sovereign immunity precludes the plaintiff from seeking punitive damages against this particular defendant.

In the CFEPA, the CHRO is precluded from awarding punitive damages but there is no case law that prohibits a court from awarding punitive damages and attorneys fees. See *Bridgeport Hospital v. Commission on Human Rights & Opportunities,* 232 Conn. 91, 653 A.2d 782 (1995); *Cantavero v. Horizon Meat & Seafood Dist.,* Superior Court, judicial district of Stamford, Docket No. 152918 (April 22, 1997) (19 CONN.L.RPTR. 333) (Nadeau, J.), and authorities cited therein. In addition, the doctrine of sovereign immunity does not bar an award of punitive damages against this particular defendant. Sovereign immunity is waived by the express statutory language found in General Statutes § 46a-51(10), which defines "employer" to include "the state and all political subdivisions thereof ..."

*4 A finding of a willful violation is a prerequisite to an award of punitive damages. *Markey v. Santangelo,* 195 Conn. 76, 77, 485 A.2d 1305 (1985)."[I]n Connecticut punitive damages are to be measures by the reasonable attorneys fees and costs."*Ford v. Blue Cross & Blue Shield of Connecticut, Inc.,* 216 Conn. 40, 59 n. 4, 578 A.2d 1054 (1990). Accordingly, pursuant to the CFEPA, the plaintiff is awarded punitive damages in the amount of $63,254.43 for the willful violations by the defendant as found by the jury on the first and third counts of the plaintiff's complaint.

D. Liquidated Damages

In addition, the plaintiff seeks liquidated damages pursuant to the ADEA. Specifically, the plaintiff seeks an award in the amount of the back-pay award and an additional sum in the amount of $150,000.00, representing a doubling of the compensatory damages for the retaliation. The plaintiff claims to be entitled to this award because of the jury's finding of willful violations on the part of the defendant. The defendant opposes any award of liquidated damages in excess of an amount equal to the back pay award.

The jury's finding that the defendant acted willfully does entitle the plaintiff to liquidated damages pursuant to the ADEA. Nevertheless, damages allowable, under the ADEA are limited to pecuniary loss and liquidated damages, if a willful violation is found, in an amount equal to the pecuniary loss. 29 U.S.C. § 626(b); *Coston v. Plitt Theatres, Inc.,* 831 F.2d 1321 (7th Cir.1987), *vacated on other grounds,*486 U.S. 1020, 108 S.Ct. 1990, 100 L.Ed.2d 223 (1988)."[L]itigants under the ADEA may not recover the broad range of compensatory damages for intangible elements of injury that characterize tort-type personal injury statutes, ADEA litigants cannot recover for either pain and suffering ... or for emotional distress ..." (Citations omitted.) *Downey v. C.I.R.,* 33 F.3d 836, 839 (7th Cir.1994). The damages contemplated by the ADEA, 29 U.S.C. § 626(b) are two fold. "First, it includes items of pecuniary or economic loss such as wages, fringe, and other job-related benefits. Second, it includes liquidated damages (calculated as an amount equal to the pecuniary loss) which compensate the aggrieved party for nonpecuniary losses arising out of a willful violation of the ADEA."*Coston v. Plitt Theatres, Inc., supra,* 831 F.2d 1329-30, quoting H.R.Rep. No. 950, 95th Cong., 2d Sess. 13, *reprinted in*1978 U.S.Code Cong. & Admin. News 504, 528, 535 (parenthetical expression in original). See also *Paolitto v. John Brown E. & C., Inc.,* 953 F.Supp. 17, 20-22 (D.Conn.1997), affirmed151 F.3d 60, 67-68 (2nd Cir.1998).

Accordingly, given the jury's finding of willful conduct on the part of the defendant, the plaintiff is awarded liquidated damages under the ADEA in the amount of $6454.86 on her age claim and on her retaliation claim for a total award of $12,909.72.

*5 The plaintiff is not entitled to an additional $150,000.00 in liquidated damages on the plaintiff's retaliation claim, which represents compensation for loss of enjoyment of life, humiliation and embarrassment. The jury was charged pursuant to instructions which were agreed to by all counsel and to which there were no exceptions taken, specifically not to consider any back pay that the plaintiff may have lost in calculating their damage award.

As such the $150,000.00 award represents nonpecuniary losses which are not to be used in calculating a liquidated damage figure under the ADEA.

E. Prejudgment Interest

Finally, the plaintiff seeks prejudgment interest under the ADEA on the plaintiff's back-pay award at the rate of 10%, pursuant to General Statutes § 37-3b, through March 6, 1999. The defendant maintains that prejudgment interest is not authorized by the ADEA.

"[I]n ADEA cases prejudgment interest may not be awarded where liquidated damages are also awarded."*Coston v. Plitt Theatres, Inc., supra*, 831 F.2d 1337. Since the plaintiff has been awarded liquidated damages pursuant to the ADEA, the plaintiff is not entitled to prejudgment interest.

F. Conclusion

In conclusion, as to the Plaintiff's Motion for Post-Trial Relief (# 126), in addition to the $200,000.00 in compensatory damages awarded by the jury, the plaintiff is awarded back pay in the amount of $6,454.86 pursuant to the CFEPA and the ADEA. The plaintiff's pension benefits shall be adjusted accordingly. The plaintiff is also awarded her reasonable attorneys fees in the amount of $63,254.43, pursuant to the CFEPA and the ADEA. Additionally, the plaintiff is awarded punitive damages in the amount of $63,254.43 pursuant to the CFEPA. Finally, the plaintiff is awarded liquidated damages on her age claim and on her retaliation claim pursuant to the ADEA for a total award of $12,909.72. The plaintiff's requests for prejudgment interest is hereby denied.

II. Defendant's Motion to Set Aside Verdict, New Trial or Remittitur (# 127, 127.01, 127.02)

The verdict in this case was accepted on January 28, 1999. The defendant's above captioned, combined motion was filed on February 26, 1999. Practice Book § 16-35 provides that such motions "must be filed with the clerk within 10 days after the day the verdict is accepted; provided that for good cause the judicial authority may extend this time."The defendants motion was untimely. Nevertheless, the plaintiff did not raise this issue and it is therefore waived. *Coelho v. Posi-Seal International, Inc.*, 208 Conn. 106, 108 n. 3, 544 A.2d 170 (1988).

A. Defendant's Motion to Set Aside Verdict (# 127)

The defendant claims that the evidence was insufficient to support the jury's verdict, that the court erred in allowing evidence regarding discrimination prior to the effective date of the Stipulated Agreement, and that the damages awarded by the jury were excessive.

*6 The court finds that the verdict and damage award is reasonably supported by the evidence, and the jury could and did reasonably and legally reach their conclusion. "Litigants in a civil case have a constitutional right to have [questions] of fact decided by a jury."(Internal quotation marks omitted.) *Beizer v. Goeppfert*, 28 Conn.App. 693, 703, 613 A.2d 1336 (1992). The court will not disturb the conclusions reached by the jury. Accordingly, the Motion to Set Aside Verdict (# 127) is hereby denied.

D. Defendant's Motion for New Trial (# 127.01)

"Any motion for a new trial is addressed to the sound discretion of the trial court and will not be granted except on substantial grounds."*Burr v. Lichtenheim*, 190 Conn. 351, 355, 460 A.2d 1290 (1983). The motion for a new trial is used to assert the ground of newly discovered evidence. *Id.*

The defendant does not claim any newly discovered evidence. Accordingly, the Motion for New Trial (# 127.01) is hereby denied.

C. Motion for Remittitur (# 127.02)

As previously noted, the parties in a civil case have a constitutional right to a jury's determination as to questions of fact. *Beizer v. Goepfert, supra*.The court finds the jury's award of compensatory damages in the total amount of $200,000.00 to be "a fair appraisal of compensatory damages ..."*Buckman v. People Express, Inc.*, 205 Conn. 166, 177, 530 A.2d 596 (1987).

Accordingly, the defendant's Motion for Remittitur (# 127.02) is hereby denied.

It is so ordered.

All Citations

Not Reported in A.2d, 1999 WL 300643, 24 Conn. L. Rptr. 433

Footnotes

1

By Order Sua Sponte dated April 21, 1999, this court directed the parties to provide the court with a computation of the plaintiff's back pay for 300 days prior to January 24, 1996. By way of compliance dated April 26, 1999, plaintiff's counsel did provide back-pay figures from March 30, 1995 to January 24, 1996. Counsel for the defendant provided slightly different calculations. In addition, plaintiff's counsel submitted an unsolicited Supplemental Brief on the Issue of Back Pay Under the ADEA. The court did read this brief and the cases and statutes cited therein. The brief was not persuasive and had no effect on the court's decision herein since it referred to a statute and a case which concerned an earlier version of 29 U.S.C. § 626(e) that was struck out by the 1991 Amendments, Subsec. (e), Pub.L. 102-66.

2 The court has calculated this figure by adding the following figures:

$ 848.05 back pay 3/30/95-7/6/95 (Plaintiff's Compliance with Order Dated April 21, 1999.)

$ 878.36 back pay 7/7/95-9/28/95 (Plaintiff's Compliance with Order Dated April 21, 1999.)

$ 594.44 back pay 9/29/95-12/3/95 (from Plaintiff's Exhibit 54 for ID, calculated by taking $129.23 multiplied by 4 full pay period plus 6 days ($516.92 + $77.52).)

$4134.11 back pay from 12/4/95 (Defendant's Exhibit Q.)

$6454.96

3 General Statutes § 46a-104 provides, "[t]he court may grant a complainant in an action brought in accordance with Section 46a-100 such legal and equitable relief which it deems appropriate including, but not limited to, temporary or permanent injunctive relief, attorneys fees and court costs."

4 The court ... shall, in addition to any judgment awarded to the plaintiff ... allow a reasonable attorneys fee to be paid by the defendant ...29 U.S.C § 216(b).

5 As previously noted, the CFEPA authorizes a court to grant "such legal and equitable relief which it deems appropriate including, but not limited to, temporary or permanent injunctive relief attorneys fees and court costs."General Statutes § 46a-104.

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Eaddy v. Department of Children & Families
Superior Court of Connecticut, Judicial District of Hartford. September 1, 2011 Not Reported in A.3d 2011 WL 4424428 52 Conn. L. Rptr. 469 (Appellate Brief)

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Only the Westlaw citation is currently available.

Superior Court of Connecticut,
Judicial District of Hartford.

Gwendolyn EADDY

v.

DEPARTMENT OF CHILDREN & FAMILIES et al.

No. HHDCV106013363S. Sept. 1, 2011.

Opinion

PECK, J.

*1 The plaintiff, Gwendolyn Eaddy, filed this four-count complaint against the following eight defendants: the Department of Children and Families (DCF); Susan Hamilton, who was then the Commissioner of DCF; Amy Gionfriddo, a DCF social worker (collectively, the DCF defendants); the Meriden Board of Education and Mary Cortright, Joy Baker, Thomas Brown and Maggie Plant, who are employed by the board (collectively, the Meriden defendants). Count one is a claim for defamation against the Meriden defendants only. Count two is directed against all of the defendants for vexatious suit. Count three alleges intentional infliction of emotional distress against all the individual defendants, including Gionfriddo, in their individual capacities. Count four is directed against the DCF defendants for violations of General Statutes § 46a–71(a) and (b).[1] The prayer for relief seeks injunctive relief, compensatory damages, punitive damages, attorneys fees and costs.

The complaint alleges the following facts. The plaintiff is an African–American female, who resides in Meriden, Connecticut. She has a ten-year-old son, E.A., and a kindergarten-aged daughter, J.A. E.A. is enrolled in the Meriden public school system. On May 8, 2008, E.A. did not return home from school on the school bus as expected by the plaintiff. The plaintiff telephoned E.A.'s school, the Casimir Pulaski School, to inquire as to the whereabouts of her son. The school's principal, Thomas Brown, informed the plaintiff that he had called DCF because E.A. alleged that the plaintiff had beaten him using a shoe, a belt and a blow dryer. The plaintiff then went to the school, where a department worker, Amy Gionfriddo, outlined the allegations of physical abuse that E.A. had made against the plaintiff.

A few days later, the plaintiff received a call from Gionfriddo. Gionfriddo asked the plaintiff if the plaintiff told E.A. that he could be "taken away" from her by the authorities. The plaintiff indicated that she had made that statement to E.A., and justified it by citing "new bullying laws, and legislation that supports [safety] and zero tolerance policies in schools"; E.A.'s disciplinary, medical and mental health issues as well as the realities facing special needs and African–American male students. Gionfriddo criticized the plaintiff's viewpoint, telling the plaintiff that she was "espousing racist views."

From the May 8, 2008 incident until December of 2008, the plaintiff was under investigation by DCF. At some point, the plaintiff informed school officials of her belief that E.A. should be enrolled in anger management and conflict resolution classes. The school officials, as well as "the doctor," told the plaintiff that E.A.'s "medication regimen had to be continued" and that "the topic of anger management might then be revisited after they get a 'handle' on his medication."Despite disagreeing with this course of action, the plaintiff complied with it "in order to avoid being labeled as a 'bad mom.' "

*2 On June 11, 2008, DCF substantiated charges of emotional neglect and two counts of educational neglect against the plaintiff. Charges of physical abuse and physical neglect were not substantiated. A charge of educational neglect was also substantiated regarding J.A. As a result, the plaintiff learned that she would be placed on a registry for individuals against whom charges of child abuse and neglect had been substantiated. On June 20, 2008, the plaintiff appealed the substantiated findings of emotional and educational neglect

against her.[2] On December 31, 2008, the charges of emotional and educational neglect were overturned as a result of the administrative appeal.

Before the court is the DCF Defendants' motion to dismiss all the claims against them, which was filed on August 25, 2010. Specifically, they move to dismiss counts two and four on the ground of lack of subject matter jurisdiction, and count three as to Gionfriddo on the ground of lack of personal jurisdiction and statutory immunity under General Statutes § 4–165. The issues have been fully briefed. Oral argument was held at short calendar on May 9, 2011.

"A motion to dismiss ... properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court ... [T]he doctrine of sovereign immunity implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss."(Citation omitted; internal marks omitted.) *Bacon Construction Co. v. Dept. of Public Works*, 294 Conn 695, 706, 987 A.2d 348 (2010)."A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction."*Wilcox v. Webster Ins., Inc.*, 294 Conn. 206, 213, 982 A.2d 1053 (2009).

"When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must consider the allegations of the complaint in their most favorable light ... In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader."(Internal quotation marks omitted.) *Conboy v. State*, 292 Conn. 642, 651, 974 A.2d 669 (2009)."[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised."(Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. New London*, 265 Conn. 423, 430 n. 12, 829 A.2d 801 (2003).

I

COUNT TWO

(Vexatious Suit As To All Defendants)

"[T]he purpose of the sovereign immunity doctrine is to protect the state from liability for private litigation that may interfere with the functioning of state government and may impose fiscal burdens on the state ..."*Gordon v. H.N.S. Management Co.*, 272 Conn. 81, 105, 861 A.2d 1160 (2004)."The doctrine of sovereign immunity is a rule of common law that operates as a strong presumption in favor of the state's immunity from liability or suit ... [T]his court has recognized the well established principle that statutes in derogation of sovereign immunity should be strictly construed ... [W]hen there is *any doubt* about their meaning or intent they are given the effect which makes the least rather than the most change in sovereign immunity."(Emphasis in original; internal quotation marks omitted.) *Hicks v. State*, 297 Conn. 798, 801–02, 1 A.3d 39 (2010).

*3 The DCF defendants argue that the plaintiff's claims against them in count two for vexatious suit are barred by the doctrine of sovereign immunity. In particular, they contend that the plaintiff's claim for monetary damages is barred by sovereign immunity and that her claim for injunctive relief is barred because the plaintiff fails to plead facts which would qualify this claim for any recognized exception to the doctrine. They also argue that the court lacks authority to grant injunctive relief due to the plaintiff's failure to file a verified complaint as required by General Statutes § 52–471(b). In her opposition, the plaintiff maintains that count two is not barred by sovereign immunity because she has alleged conduct by the DCF defendants that falls within two of the exceptions to sovereign immunity—the exception for conduct by state officials that violated the plaintiff's constitutional rights, as well as the exception for conduct by state officials in excess of their statutory authority.

"[T]he sovereign immunity enjoyed by the state is not absolute. There are [three] exceptions: (1) when the legislature, either expressly or by force of a necessary implication, statutorily waives the state's sovereign immunity ... (2) when an action seeks declaratory or injunctive relief on the basis of a substantial claim that the state or one of its officers has violated the plaintiff's constitutional rights ... and (3) when an action seeks declaratory or injunctive relief on the basis of a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer's statutory authority."(Citations omitted; internal quotation marks omitted.) *Columbia Air Services, Inc. v. Dept. of Transportation*, 293 Conn. 342, 349, 977 A.2d 636 (2009)."In the absence of a proper factual basis in the complaint to support the applicability of these exceptions, the granting of a motion to dismiss on sovereign immunity grounds is proper."(Internal quotation marks omitted.) *Id.*, at 350.

In count two, a vexatious suit claim, the plaintiff incorporates the factual allegations in her statement of facts and further alleges that the DCF defendants lacked "probable cause to take actions to cause DCF to institute and/or [continue] the investigation of Plaintiff for emotional abuse and/or educational neglect," but proceeded to do so nonetheless.

The plaintiff does not contest the DCF defendants' assertion that her claim for monetary relief as to count two is barred by the doctrine of sovereign immunity. Indeed, under Connecticut law, "[i]n the absence of a statutory waiver of sovereign immunity, the plaintiff may not bring an action against the state for monetary damages without authorization from the claims commissioner to do so."*Columbia Air Services v. Department of Transportation, supra*. 293 Conn. at 351. "[T]he exception to the doctrine of sovereign immunity for actions by state officers in excess of their statutory authority applies only to actions seeking declaratory or injunctive relief, not to actions for money damages. When a plaintiff brings an action for money damages against the state, he must proceed through the office of the claims commissioner pursuant to [General Statutes §§ 4–141 through 4–165]. Otherwise, the action must be dismissed for lack of subject matter jurisdiction under the doctrine of sovereign immunity."*Prigge v. Ragaglia*, 265 Conn. 338, 349, 828 A.2d 542 (2003). Since there is no indication in the complaint or motion papers that the plaintiff has received the requisite permission, the plaintiff's claim for monetary relief as to count two is barred by sovereign immunity.

*4 Although the defendants argue that any purported claim by the plaintiff for injunctive relief as to count two is also barred by the doctrine of sovereign immunity, the court is not convinced that she has even properly stated such a claim. While the prayer for relief for the entire complaint seeks injunctive relief generally, the plaintiff makes no specific claim for such relief in count two. In fact, paragraph 47 merely notes that the plaintiff has been damaged. In any event, the plaintiff does not allege facts which would reasonably support a claim that the DCF defendants violated her constitutional rights or acted in excess statutory authority such as would overcome the bar of sovereign immunity. See *Columbia Air Services v. Department of Transportation, supra,* 293 Conn. at 349–51. For all these reasons, the motion to dismiss count two of the complaint is, in all respects, granted for lack of subject matter jurisdiction.

II

COUNT THREE

Count three is identified by the plaintiff parenthetically as "intentional infliction of emotional distress" as to "All Individual Defendants in their Individual Capacities."In support of its motion to dismiss this count, the DCF defendants point out, and the plaintiff concedes, as confirmed by the summons and return of service, none of the so-called individually-named defendants, including Gionfriddo, were served individually.[3]"[A]n action commenced by ... improper service must be dismissed."(Internal quotation marks omitted.) *Jimenez v. DeRosa*. 109 Conn.App. 332, 338, 951 A.2d 632 (2008)."[W]hen a particular method of serving process is set forth by statute, that method must be followed ... Unless service of process is made as the statute prescribes, the court to which it is returnable does not acquire jurisdiction ... The jurisdiction that is found lacking ... is jurisdiction over the person ..." (Internal quotation marks omitted.) *Argent Mortgage Co., LLC v. Huertas*, 288 Conn. 568, 576, 953 A.2d 868 (2008)."There is no substitute for 'in hand' or abode service in accordance with General Statutes § 52–54, where jurisdiction over the person of a resident individual is sought ..."*White–Bowman Plumbing & Heating, Inc. v. Biafore*, 182 Conn. 14, 16–17, 437 A.2d 833 (1980). Suing state defendants in their individual capacities requires "that they be served at their ususal places of abode."*Edelman v. Page*. 123 Conn.App. 233, 243, 1 A.3d 1188 (2010). See also *Setoski v. University of Connecticut Health Center*, Superior Court, judicial district of Hartford, Docket No. CV 10 6012794 (April 15, 2011, Peck, J.).

Because she was not properly served in her individual capacity, the court lacks jurisdiction over the person of Gionfriddo as to count three of the plaintiff's complaint. Therefore, the DCF defendant's motion to dismiss count three of the complaint as to Gionfriddo must be granted.

III

COUNT FOUR

In count four of the complaint, the plaintiff alleges that the DCF defendants violated General Statutes § 46a–71(a) and (b). The DCF defendants maintain that the plaintiff's claims for monetary damages and injunctive relief in connection with these provisions are barred by

the doctrine of sovereign immunity.[4] The plaintiff did not specifically address count four in her memorandum in opposition.

*5 In count four, the plaintiff makes the following additional allegations: The DCF defendants discriminated against her on the basis of her race and they exceeded their statutory authority in their racially biased conduct and treatment of her. The plaintiff filed a complaint with the Connecticut commission on human rights and opportunities (CHRO), pursuant to General Statutes § 46a–82, in which she alleged claims for race and color discrimination under § 46a–71(a) and § 46a–71(b). The commission issued a release of jurisdiction over her complaint on April 13, 2010, pursuant to a notice of release of jurisdiction, a copy of which she attached to the complaint.

Section 46a–71 provides, in relevant part as follows: "(a) All services of every state agency shall be performed without discrimination based upon race, color, religious creed, sex, marital status, age, national origin, ancestry, mental retardation, mental disability, learning disability or physical disability, including, but not limited to, blindness; (b) No state facility may be used in the furtherance of any discrimination, nor may any state agency become a party to any agreement, arrangement or plan which has the effect of sanctioning discrimination ..."

Although the statute itself does not expressly provide a private cause of action to a person claiming a violation, it must be read in conjunction with General Statutes § 46a–82, which provides in relevant part: "(a) Any person claiming to be aggrieved by an alleged discriminatory practice ... may, by himself or herself or by such person's attorney, make, sign and file with the commission a complaint in writing under oath, which shall state the name and address of the person alleged to have committed the discriminatory practice, and which shall set forth the particulars thereof and contain such other information as may be required by the commission ..."

Further, § 46a–100 provides: "[A]ny person who has timely filed a complaint with the Commission on Human Rights and Opportunities in accordance with section 46a–82 and who has obtained a release from the commission in accordance with section 46a–83a or 46a–101, may also bring an action in the superior court for the judicial district in which the discriminatory practice is alleged to have occurred or in which the respondent transacts business, except any action involving a state agency or official may be brought in the superior court for the judicial district of Hartford."Lastly, § 46a–101 provides in relevant part: "(a) No action may be brought in accordance with section 46a–100 unless the complainant has received a release from the commission in accordance with the provisions of this section."

Although the plaintiff does not recite these provisions in the text of her complaint, it is apparent that she relies on them as §§ 46a–82, 46a–100 and 46a–101 are expressly referred to in the notice attached to her complaint. Although the plaintiff's filings makes no reference to General Statutes § 46a–99, the court notes that this statute also provides a cause of action for alleged violations of various anti-discrimination statutes, including § 46a –71. Section 46a–99 provides: "Any person claiming to be aggrieved by any provision of sections 46a–70 to 46a–78, inclusive ... may petition the Superior Court for appropriate relief and said court shall have the power to grant such relief, by injunction, or otherwise, as it deems just and suitable."

*6 The Connecticut Supreme Court has determined, under the corollary statutory scheme involving claims of employment discrimination premised on violations of General Statutes § 46a–60, that § 46a–100, assuming proper compliance with the related provisions § 46a–82 and § 46a–101, constitutes an express waiver of sovereign immunity. See *Lyon v. Jones,* 291 Conn. 384, 400, 968 A.2d 416 (2009). Although the court in *Lyon* did not reach the claims brought under § 46a–70, the similarity of the relationship between § 46a–70 and § 46a–100 and § 46a–101, to that of § 46a–60 and those same provisions, is inescapable in situations where the CHRO has released its jurisdiction over a properly filed claim. Applying similar reasoning to that employed by the Supreme Court in *Lyon v. Jones,* at the very least, it would appear that § 46a–99 constitutes a similar waiver of statutory immunity at least with respect to injunctive relief.[5]

In *Lyon,* the court explained that its conclusion was consistent with General Statutes § 4 –142, which "sets forth various exceptions to the claims commissioner's jurisdiction, and provides in relevant part: 'There shall be a Claims Commissioner who shall hear and determine all claims against the state except ... (2) claims upon which suit *otherwise is authorized by law*... (3) claims for which an administrative hearing procedure otherwise is

established by law ..." (Emphasis original.) *Lyon v. Jones, supra*, 291 Conn. at 401–02."[Section] 4–142(3) ... specifically exempts from the jurisdiction of the claims commissioner 'claims for which an administrative hearing procedure otherwise is established by law ...'Section 46a–82(a) provides just such an alternative administrative procedure: 'Any person claiming to be aggrieved by an alleged discriminatory practice ... may ... make, sign and file with the commission a complaint in writing under oath ...' Thus, it is apparent that claims over which the commission has statutory jurisdiction are, by the express terms of § 4–142(3), excluded from the purview of the claims commissioner."*Id.*, at 402.

"Moreover, § 4–142(2), read together with § 46a–101, also operates to exempt a claim brought under § 46a–60 from the claims commissioner's jurisdiction. Section 46a–101(a) provides: 'No action may be brought in accordance with section 46a–100 unless the complainant has received a release from the commission in accordance with the provisions of this section.'Viewed as a limitation on the availability of a private cause of action, § 46a–101 implies that § 46a–100 creates that cause of action, rather than merely providing rules for determining the proper venue. A complaint brought before the commission alleging a violation of § 46a–60 is simply not 'cognizable' by the claims commissioner ...Section 46a–100 explicitly authorizes a plaintiff to file a discrimination action, over which the commission has released its jurisdiction, against the state in Superior Court without the approval of the claims commissioner. Indeed, a contrary construction would undermine the provisions of the act, leading to absurd and unworkable results, which the legislature clearly did not intend."(Citation omitted.) *Lyon v. Jones, supra*, 291 Conn. at 403.

*7 "The parties to this appeal, including the attorney general's office as appellee, agree with this conclusion. Indeed, this is the long-standing position of the office of the claims commissioner itself."*Lyon v. Jones, supra*, 291 Conn. at 404.

Although the particular discriminatory practice at issue in *Lyons v. Jones* was employment discrimination, the language that the court employed in its analysis indicates that its conclusion was based on the statutory language and scheme that also apply to allegations of other discriminatory practices, such as those of the plaintiff in this matter, that were brought to and then released by the CHRO pursuant to §§ 46a–82[6] and 46a–100, respectively. In addition, to the extent that it may be argued that § 46a–99 is the only provision in the statutory scheme which provides a private cause of action for claims arising out of "discriminatory state practices" such as those set forth in § 46a–7l, the fact is that the language contained in § 46a–99 does not limit the form of recovery available to injunctive relief. Rather, the language of § 46a–99 is that a person "may petition the Superior Court for *appropriate relief* and said court shall have the power to grant such relief, by injunction *or otherwise*.(Emphasis added.)

Finally, the DCF defendants argue that the plaintiff's claim for injunctive relief as to count four should be precluded pursuant to General Statutes § 52–471(b) because she has failed to verify by oath the allegations made in her complaint. Section 52–471(b) provides: "No injunction may be issued unless the facts stated in the application therefor are verified by the oath of the plaintiff or of some competent witness."" '[W]hile [§ 52–471(b)] requires the facts stated in an application for injunction to be verified by the oath of the plaintiff or some competent witness before the court may grant an injunction, it does not require the plaintiff to file a verified complaint or affidavit before the court may exercise jurisdiction over an action for an injunction.'*Hiscox v. Peru*, Superior Court, judicial district of New London, Docket No. CV–07 5003832 (October 22, 2008, Martin, J.).'A party seeking injunctive relief may be allowed to verify its allegations at the time of trial ...'*DeMartino v. DiSora*,... Superior Court, Docket No. CV 90 030509 [(November 27, 1990, Curran, J.)]."*Cooke v. Turnure*, judicial district of Litchfield, Docket No. CV 08 4007577 (December 8, 2008, Roche, J.) (46 Conn. L. Rptr. 765, 766). Therefore, the plaintiff may verify the allegations made in her complaint at the time of trial. For all the foregoing, reasons, the motion to dismiss count four must be denied.

CONCLUSION

Accordingly, the DCF defendants' motion to dismiss counts two and three is hereby granted and the motion to dismiss count four is hereby denied.

All Citations

Not Reported in A.3d, 2011 WL 4424428, 52 Conn. L. Rptr. 469

Footnotes

1 In general terms, Section 46a–71 prohibits discrimination in services performed by state agencies.

2 It is unclear from the plaintiff's complaint if her appeal related to the charges substantiated regarding E.A. only, or E.A. and J.A.

3 The plaintiff asked the court to consider and grant her motion to extend the return date, which she filed with her opposition to the motion to dismiss, so that she could properly serve certain defendants in their individual capacities. The DCF defendants opposed the motion to extend, and, on May 12, 2011, this court denied it.

4 The plaintiff does not specifically state upon which statutory provision upon which she brings her cause of action as § 46a–71 does not, itself, provide the basis for a private cause of action. However, she has attached a "Release of Jurisdiction" from the Commission on Human Rights and Opportunities (CHRO), dated April 13, 2010, pursuant to General Statutes § 46a–101, which authorizes a private cause of action pursuant to § 46a–100 for persons who have timely filed a complaint and obtained a release of jurisdiction from the CHRO. Practice Book § 10–3(a) provides, "[w]hen any claim made in a complaint ... is grounded on a statute, the statute shall be specifically identified by its number."'"Although a plaintiff generally is required to identify specifically any statute on which a particular action is grounded; see Practice Book § 10–3 (a); 'our courts repeatedly have recognized that [this rule] is directory and not mandatory ...'*Burton v. Stamford,* 115 Conn.App. 47, 65, 971 A.2d 739,cert. denied, 293 Conn. 912, 978 A.2d 1108 (2009). The plaintiff is not barred from recovery thereby as long as the defendant sufficiently was apprised of the nature of the action. *Spears v. Garcia,* 66 Conn.App. 669, 676, 785 A.2d 1181 (2001), aff'd, 263 Conn. 22, 818 A.2d 37 (2003); see also *Caruso v. Bridgeport,* 285 Conn. 618, 629, 941 A.2d 266 (2008) ('[t]he critical consideration under § 10–3(a)... is whether the [defendant was] on notice of the statutory basis for the plaintiff's claims').*Brewster Park, LLC v. Berger,* 126 Conn.App. 630, 14 A .3d 334 (2011)."*Smigelski v. Dubois,* Superior Court, judicial district of New Britain, Docket No. CV 10 6007570 (March 21, 2011, Young, J.). Although for reasons discussed later on in this memorandum it is not clear whether the basis of her cause of action is § 46a–100 or § 46a–99 because of some overlap in these provisions, there is no question that she relies on one or both of these provisions as the basis of count four.

5 In *Lyon,* the court noted that 46a–100, "is the primary vehicle allowing a complainant who has received a release from the commission to further prosecute her claim in court."*Id.,* at 400.The court quoted the statute and concluded, "from this language, and from the statute's place in the overarching statutory scheme, that § 46a–100 expressly waives sovereign immunity and creates a cause of action in the Superior Court for claims alleging a violation of § 46a–60 over which the commission has released its jurisdiction."*Id.* Section 46a–99 is also an integral part of the same "overarching statutory scheme" that led the court to conclude that § 46a–100 "expressly waives sovereign immunity" in connection with a claim "over which the commission has released its jurisdiction."

6 In this regard, the court notes that § 46a–82 refers to "discriminatory practices," not only discriminatory employment practices.

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